EXHIBIT 2

Dockets.Justia.com

Ed Nelson

From: Michael Lukse [MichaelL@SoundChoice.com]
Sent: Friday, April 13, 2007 4:42 PM
To: swl@1sttechnology.com
Cc: Kurt Slep; Derek Slep; Ed Nelson
Subject: RE: Email Response

Dear Scott,

Under the circumstances, this is a fair compromise, as neither of us will have to spend any further dollars on legal costs.

So if I am clear, what you are suggesting is that the revenue stream to 1st Media will be as follows:

On net sales of the following annual sales assuming the following levels-

		Cummulative
Assume year 1 sales of $250,000 @2 ½%	$ 6.250	$ 6,250
Assume year 2 sales of $500,000		
2 ½ % of $250,000	$ 6.250	
5% of $250,000	$12,250	$24,750
Assume year 3 sales of $750,000		
2 ½ % of $250,000	$ 6.250	
5% of $250,000	$12,250	
7 ½% of 250,000	$18,750	$72,000
Assume year 4		
2 ½ % of $250,000	$ 6.250	
5% of $250,000	$12,250	
7 ½% of 250,000	$18,750	
10% of 250,000	$25,000	$134,250

Etc.
After the cumulative amount reaches $250,000, the percentage drops back to 2 ½%.

If this is the offer, we are amenable to it, as it allows for a long term outlook, and is based on the incremental profit on the higher sales.

Please let me know if this is a correct understanding. Also, we would expect that any agreement would depend on the life of the patent, and would not extend further than the patent life, and/or if the patent is potentially overturned.

Thank you for understanding our situation. We appreciate your view as well, and although we still feel that content should not be subject to this patent, it is a far better arrangement than to spend time arguing our respective positions.

Kind regards,
Michael

From: swl@1sttechnology.com [mailto:swl@1sttechnology.com]
Sent: Friday, April 13, 2007 5:21 PM
To: Michael Lukse
Cc: Kurt Slep; Derek Slep; nelson@fsclaw.com
Subject: Email Response

Dear Michael,

Thanks for your belated email - because of the delay I have informed our lead legal counsel to continue discussions from now on on a lawyer-to-lawyer basis. However as a courtesy I will respond this last time to your email. Overall your proposal to pay either nothing or 2.5% of net sales isn't a good faith offer given our guidance call of last week, or even a candidate for settlement discussions.
I understand your financial position and it is our goal that we reach an agreement that is successful to all parties. In this spirit I will make one final offer below for an agreement between the parties after which you should direct your

EXHIBIT 3

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of April ___, 2007 (the "Effective Date") between **1ST MEDIA, LLC,** a Nevada limited liability company ("1st Media"), and **SLEP-TONE ENTERTAINMENT CORPORATION D/B/A SOUND CHOICE ACCOMPANIMENT TRACKS,** a North Carolina Corporation ("Slep-Tone").

WHEREAS, this Agreement pertains to, *inter alia*, U.S. Patent No. 5,464,946 entitled "System and Apparatus for Interactive Multimedia Entertainment" (the "Patent In Suit");

WHEREAS, 1st Media owns the entire right, title, and interest in and to the Patent In Suit and maintains the exclusive right to license and enforce the Patent In Suit and enter into this Agreement;

WHEREAS, Slep-Tone produces and disseminates audio and video Karaoke media for online commercial distribution;

WHEREAS, 1st Media has filed a patent infringement action against Slep-Tone numbered and styled 2:07-cv-00056-LDG-GWF, *1st Media, LLC vs. Napster, Inc., et al.*, pending in the United States District Court for the District of Nevada, (the "Pending Action"); and

WHEREAS, the parties to this Agreement seek an amicable and final business resolution and settlement of any and all claims relating to the Patent In Suit, including the Pending Action, which were, could, or can in the future be asserted in any lawsuit, on the terms and conditions set forth below:

NOW, THEREFORE, in accordance with the foregoing recitals, and in consideration of the mutual covenants contained herein, 1st Media and Slep-Tone agree as follows:

1. DEFINITIONS.

a. 1st Media Patents. The term "1st Media Patents" means the Patent In Suit as well as all United States or foreign patents that have issued or may issue on applications whose subject matter in whole or in part is entitled to the benefit of the filing date of the Patent In Suit, including, without limitation continuations, continuations-in-part, divisions, derivatives, reissues, reexaminations and extensions thereof.

b. 1st Media. The term "1st Media" means 1st Media, LLC.

c. Slep-Tone. The term "Slep-Tone" means Slep-Tone Entertainment Corporation d/b/a Sound Choice Accompaniment Tracks and does not include Slep-Tone affiliates, subsidiaries, agents, assigns, partners, co-venturers, or current and/or future customers.

d. Net Sales: The term "Net Sales" means online Karaoke products and services gross sales less reasonable (and itemizable) returns as particularly reported as "Net Sales" on Sound Choice's Income Statements (an exemplary copy of which is attached hereto as Exhibit A for reference).

2. COVENANT NOT TO SUE. Subject to the fulfillment of the payment provisions of this Agreement, 1st Media hereby covenants and agrees that neither 1st Media, nor any entity previously, or in the future, partially or wholly owned by 1st Media, nor any successor to or transferee or assignee of 1st Media, will hereafter bring any lawsuit, cause of action, claim or demand of any kind against Slep-Tone for any act involving the creation or distribution of audio or video Karaoke content/media for use in online downloading or streaming via third party distribution systems. This covenant shall not, and does not, extend to any Slep-Tone affiliate, subsidiary, assign, agent, partner, co-venturer, or current and/or future customer. No rights in and to the 1st Media Patents are granted Slep-Tone by virtue of this covenant, and, accordingly, no rights in and to the 1st Media Patents are granted to any third party.

3. ASSIGNMENT. Except in the event that all or substantially all of Slep-Tone's stock, assets or business is sold or transferred, the covenant not to sue embodied in this Agreement, is personal to Slep-Tone and is not transferable or assignable to any other entity without the express written consent of 1st Media. In the event of an assignment, the covenant not to sue herein shall not apply or extend to pre-existing products or processes of the assignee.

4. COMPENSATION SCHEDULE. Slep-Tone shall pay to 1st Media a percentage of Slep-Tone's cumulative Net Sales in accordance with the following schedule:

a. 2.5% for $0 to $250,000 in annual Net Sales;

b. 5% for $250,000.01 to $500,000 in annual Net Sales;

c. 7.5% for $500,000.01 to $750,000 in annual Net Sales; and

d. 10% for annual Net Sales over $750,000.

Once 1st Media receives a cumulative total of $250,000, the compensation schedule recited above will be abandoned and payment of a flat rate of 2.5% of Slep-Tone's Net Sales will take effect and remain in effect until either: 1) the 1st Media Patents expire; or 2) this Agreement is no longer in effect.

5. QUARTERLY PAYMENTS REQUIRED. Compensation payments from Paragraph 5 will be made by Slep-Tone on a quarterly basis. A quarter is equal to three calendar months with the first quarter covered by this Agreement being the second quarter of 2007, starting on April 1, 2007 and ending on June 30, 2007. All quarterly payments under this agreement must be made within thirty (30) days after the last day of the quarter.

6. QUARTERLY REPORTING. Quarterly payments from Sound Choice shall be accompanied by an Income Statement substantially in the form of the Income Statement attached as Exhibit A which summarizes, among other things, Net Sales.

7. PAYMENTS. Payments shall be made in U.S. currency and without deductions or withholdings of any kind. This sum shall be payable by wire transfer to 1st Media and its attorneys, FRIEDMAN, SUDER & COOKE, to the following client trust account:

Mr. Vern Spurlock
Private Banking
Bank One, N.A.
420 Throckmorton, Suite 300
Fort Worth, TX 76102
Ph. 817-884-4464

ABA/Routing No. 111000614
Friedman, Suder & Cooke Trust IOLTA
Account No. 1880206196

8. AUDIT REQUIREMENT. Upon 30 days notice, Slep-Tone agrees to make its books and records available once a year to 1st Media for auditing at no cost to 1st Media other than the costs detailed herein. 1st Media will bear all costs associated with hiring and employing an accountant to conduct such an audit. If the audit reveals a deviation of more than 10% between the Net Sales reported to 1st Media from Slep-Tone and the Net Sales actually received by Slep-Tone, Slep-Tone will: 1) reimburse 1st Media all costs incurred by 1st Media in conducting the audit, including the costs incurred by 1st Media in hiring an accountant; 2) pay 1st Media a penalty equal to 200% of the discovered deviation; and 3) be in material breach of this Agreement.

9. DISMISSAL OF LITIGATION. Within three (3) business days of Slep-Tone and 1st Media executing this Agreement, 1st Media shall file a Motion to Dismiss the Pending Litigation, whereby 1st Media will move to dismiss its claims against Slep-Tone. 1st Media and Slep-Tone agree that all costs incurred therein (including attorney and expert fees and expenses) shall be borne solely by the party incurring such costs

10. TERMINATION. This Agreement will expire immediately upon the material breach of any provision of this agreement or upon the expiration of the 1st Media Patents.

11. CONFIDENTIALITY. The parties shall keep the terms of this Agreement confidential except: (a) 1st Media may disclose the terms hereof to a specific third party at its election when 1st Media is engaged in bona fide licensing negotiations with that third party (subject to written restrictions against further disclosure); (b) where disclosure is required by law; and (c) where the information in question has become publicly known without breach of this Agreement. Notwithstanding the foregoing, the parties may, without breaching this section, disclose information concerning this Agreement to: (a) the Internal Revenue Service or foreign equivalent; or (b) their attorneys, accountants, or financial advisors, provided that such attorneys, accountants, or financial advisors agree to the terms of this paragraph 13. Further notwithstanding the foregoing, Slep-Tone shall release the press release attached hereto as Exhibit B to PR Newswire, or an equivalent service, and to one or more industry recognized news websites within ten (10) days of execution of this Agreement.

12. CONTROLLING LAW. This Agreement shall be governed by the laws of the State of Nevada without regard for the choice of law principles, statutes, or regulations of this or any other jurisdiction.

13. DISPUTE RESOLUTION. Any dispute arising under this Agreement shall be submitted to binding arbitration in Las Vegas, Nevada with one arbitrator having experience in patent matters, pursuant to the commercial arbitration rules of the American Arbitration Association, with only critical discovery allowed.

14. EXECUTION AUTHORIZED. Each party hereto warrants and represents to the other that its execution hereof has been duly authorized by all necessary action of such party.

15. FACSIMILE SIGNATURE. This Agreement will become binding and effective upon the exchange of facsimile copies of the required signatures.

16. ENTIRE AGREEMENT. The Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior oral and written agreements and understandings, if any, are merged herein. This Agreement may not be amended, supplemented, or modified, nor shall any obligations hereunder or condition hereof be deemed waived, except by a written instrument to such effect signed by the party to be charged. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not render the remaining terms of this Agreement null and void, nor otherwise limit or affect the validity or enforceability of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be signed and delivered, either individually or by a duly authorized officer as indicated below, as of the date indicated.

SLEP-TONE ENTERTAINMENT CORPORATION

By: ______________________

Title: ______________________

Date: ______________________

1ST MEDIA, LLC

By: ______________________

Title: ______________________

Date: ______________________

EXHIBIT 4

Sound Choice
INCOME STATEMENT
COMPARISON TO PRIOR YEAR
March 31, 2007

	CURRENT PERIOD						YEAR TO DATE					
	THIS YEAR		LAST YEAR		CHANGE I/(D)		THIS YEAR		LAST YEAR		CHANGE I/(D)	
	AMOUNT	RATIO	AMOUNT	RATIO	AMOUNT	%	AMOUNT	RATIO	AMOUNT	RATIO	AMOUNT	%
GROSS SALES	$258,285.66	103.56	$599,500.34	106.83	($341,214.68)	(56.92)	$1,046,844.81	104.96	$1,647,581.46	118.29	($600,736.65)	(36.46)
SLS. RET. & ALLOW.	$8,867.02	3.56	$38,311.26	6.83	($29,444.24)	(76.86)	$49,502.10	4.96	$254,770.57	18.29	($205,268.47)	(80.57)
NET SALES	$249,418.64	100.00	$561,189.08	100.00	($311,770.44)	(55.56)	$997,342.71	100.00	$1,392,810.89	100.00	($395,468.18)	(28.39)
COST OF SALES	$37,510.89	15.04	$60,050.29	10.70	($22,539.40)	(37.53)	$84,791.39	8.50	$112,189.52	8.05	($27,398.13)	(24.42)
GROSS MARGIN	$211,907.75	84.96	$501,138.79	89.30	($289,231.04)	(57.71)	$912,551.32	91.50	$1,280,621.37	91.95	($368,070.05)	(28.74)
VARIANCE	$1,948.65	0.78	($8,746.99)	(1.56)	$10,695.64	(122.28)	($5,430.52)	(0.54)	($19,646.54)	(1.41)	$14,216.02	(72.36)
PERIOD COST	$42,887.01	17.19	$146,114.95	26.04	($103,227.94)	(70.65)	$299,853.05	30.07	$368,904.29	26.49	($69,051.24)	(18.72)
DISTRIBUTION EXPENSE	$16,100.07	6.46	$22,487.35	4.01	($6,387.28)	(28.40)	$51,447.10	5.16	$80,769.16	5.80	($29,322.06)	(36.30)
GROSS PROFIT	$150,972.02	60.53	$341,283.48	60.81	($190,311.46)	(55.76)	$566,681.69	56.82	$850,594.46	61.07	($283,912.77)	(33.38)
SELLING EXPENSE	$70,346.17	28.20	$161,131.36	28.71	($90,785.19)	(56.34)	$173,517.37	17.40	$403,599.67	28.98	($230,082.30)	(57.01)
GENERAL & ADMIN. EXP.	$124,764.49	50.02	$165,045.93	29.41	($40,281.44)	(24.41)	$368,587.05	36.96	$468,830.33	33.66	($100,243.28)	(21.38)
RESEARCH & DEVELOP.	$19,293.05	7.74	$26,220.10	4.67	($6,927.05)	(26.42)	$53,942.32	5.41	$72,888.54	5.23	($18,946.22)	(25.99)
OTHER INCOME	$440.98	0.18	$85.27	0.02	$355.71	417.16	$9,183.06	0.92	$17,614.00	1.26	($8,430.94)	(47.86)
OTHER DEDUCTIONS	$20,871.76	8.37	$32,092.74	5.72	($11,220.98)	(34.96)	$79,548.31	7.98	$78,015.14	5.60	$1,533.17	1.97
NET INCOME	($83,862.47)	(33.62)	($43,121.38)	(7.68)	($40,741.09)	94.48	($99,730.30)	(10.00)	($155,125.22)	(11.14)	$55,394.92	(35.71)

EXHIBIT 5

communications to our lead legal counsel Edward Nelson, Esq.

Quarterly net sales, percent of net sales payable quarterly:
$0-$250K 2.5% of total quarterly net sales
$250K-$500K 5% "
$500K-$750K 7.5% "
$750K+ 10% "
Until a cumulative of $250K paid is reached, after which the amount payable drops to 2.5% of total quarterly net sales.

Regards,

Dr. Scott Lewis
CEO, 1st Media LLC

-------- Original Message --------
Subject: Settlement Discussions and Proposal
From: "Michael Lukse" <MichaelL@SoundChoice.com>
Date: Fri, April 13, 2007 8:43 am
To: <swl@1sttechnology.com>
Cc: "Kurt Slep" <KurtS@SoundChoice.com>, "Derek Slep" <DerekS@SoundChoice.com>

Dear Scott,

I apologize for the delay but we have had to really look at this and also look at the reality of our company's financial situation, as well as the personal financial situation of the two owners, Kurt and Derek Slep. Sometimes pride overshadows reality. We initially did not want to expose our current plight, but under the circumstances, we have to explain to you where we are financially so that you can appreciate and understand our proposal.

As I have reiterated before, we tried to cooperate with your prior law firm who misrepresented the issues to us in September 2006, and then deliberately did not respond to our letter of November 2006, where we asked for confirmation. We were never advised one time until the lawsuit was filed that you were claiming that we were "inducing infringement". We would have pursued discussions then to try to prove that we should not be involved in this at all. Proper discussions would have led to what we believe would have been a true understanding that we should not be involved in this at all. The responsibility rests solely with the companies with the web based technology. We truly believe you would have eventually understood that and dismissed any issues with us.

We still do not believe that we are even involved in this as we do not have web-based technology. The idea that we are inducing infringement is really a stretch. It is like saying the makers of radar detectors induce speeding, yet I have never seen a radar detector company charged in that way. We believe that a jury would not find us guilty of inducing infringement as their was never anything known about this patent, but we do not have the money to defend ourselves.

Now to our financial situation. As of December 31, 2006, we are in a negative equity position for our company, as well as currently at the end of March 31, 2007. We had huge losses in 2006 due to major returns from mass merchants, and extremely disproportionate overhead for our business as our sales have continued to slide downwards due to piracy, and lack of publisher cooperation to obtain karaoke sync licenses for newer music releases. I have attached copies of our 2004, 2005, and 2006 Form 1120S Tax Returns, and our internally generated financial statement as of March 31, 2007. We are on a calendar year basis. You will see from these returns that our business has suffered greatly in the past three years and we are barely making ends meet even today. We do not have ANY extra funds for legal fees or for purported past infringement settlement.

Since 2004, where we had sales of $7.6 million with a profit of only $108,000, we have declined through 2006 to sales of $3.2 million and a loss of $3.985 million. The owners, Kurt and Derek, have used the last of their personal funds to finance the business over the past two years, each putting in several hundred thousand dollars, which was all that they personally had available. As you will see from their personal financial statements attached, they are both personally broke, each having significant divorce settlements outstanding.

The digital revenues we generate today that come from the licensing of our content to companies with web based platforms has been approximately $350,000 revenue before publisher royalties. We just started to provide these licenses in late 2004 and have had only two years of successful implementation, with actual net results negative due to the overhead costs involved. The larger part of the revenues are generated by the web-based companies. We just get a license fee for our content used, from which we have to pay publishers in most cases.

In summary, we respectfully request that you consider dropping us from this case. We will not be able to defend ourselves in court since we do not have the financial ability to do so, and, if you were to win, we would be hard pressed to pay you. If you choose to insist on making us pay for others to use our content on their platforms, then we feel the best we could do would be to pay 2 and one half percent on our net revenues, with no prior use charges, as we legitimately did not know this patent existed and since, in reality, the "inducement to infringe" is really not what we were doing. Your former lawyers were totally unethical in not responding and explaining your company's position, probably because they knew it was wrong to make such a claim, and that if we were brought into a federal court suit, we would just roll over.

Please seriously consider our circumstances. We are providing this information under confidentiality and would hope that you respect our confidential financial information. We further believe that your dismissing us from this case will not impact any of your cases as your claim against us is solely the "inducement of infringement", whereas you have a stronger case against any web based technology company that seems to be in violation of your patent.

We will wait to hear from you on this, and again, our apologies for the delay, but we had to really look at this in light of our real financial position we are in.

Kind regards,
Michael J. Lukse